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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,147	08/07/2003	Joseph B. Busch	760-001	2805

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EXAMINER

GRAFFEO, MICHELLE

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/636,147

Applicant(s)

BUSCH, JOSEPH B.

Examiner

Michelle Graffeo

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Status of Action***

Claims 1-5 are pending and examined.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear whether the vinegar is present in an amount greater than the sodium bicarbonate and sodium chloride as combined or if the vinegar is present in an amount greater than the sodium bicarbonate and the vinegar is present in an amount greater than the sodium chloride.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The repeated terms "present in an amount of from...percent by weight" in claim 3 is a relative term which renders the claim indefinite. The term "present in an amount of from ...percent by weight" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear if the percent weight of the vinegar, sodium carbonate and sodium chloride are relative to each other or the aqueous solution of claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,610,276 to Melman.

Melman teaches an antibacterial (see col 4 lines 23-49) mouthwash (see col 1 line 9) and methods for preventing dental plaque (see Abstract) comprising acetic acid in an amount of from 0.001 to 5% (see col 3 lines 62-64), sodium bicarbonate and sodium chloride together with adjuvant compounds such as sorbital and mannitol (see col 9 Example 8) wherein the references teaches that the acetic acid is present in an amount greater than the sodium bicarbonate, for example when the acetic acid is present in an amount of 2mg and the sodium bicarbonate is present in an amount of 0.2mg, and wherein the acetic acid is present in an amount greater than the sodium

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chloride, for example when the acetic acid is present in an amount of 2mg and the sodium chloride is present in an amount of 0.3mg, and further wherein the sodium bicarbonate is present in an amount greater than the sodium chloride, for example when the sodium bicarbonate and sodium chloride are present in the respective amounts of 43mg and 23mg. Although the weights recited are for a tablet, one skilled in the art would recognize that the percentages are applicable for a mouthwash as recited in the Field of the Invention.

The Melman reference does not specifically recite that the mouthwash is cursed within an oral cavity and then removed. Nonetheless, the cursing of the aqueous mouthwash in the mouth and then removal is inherent in the use of a mouthwash and is the necessary result of using a mouthwash. Therefore, Melman teaches each element of the above claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,610,276 to Melman as applied above taken with US Patent No 5,624,906 to Vermeer and in light of US Patent No. 5,376,374 to Zelaya and further in light of US Patent Application No. 2004/0247532 to Pinol.

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Melman teaches in addition to the limitations recited above, a mouthwash comprising about 40% water (see col 8 Example 4), 10% glycerin (see col 7 Example 1), 0.6-12% sodium bicarbonate (see col 9 Example 8), about 0.9-6.6% sodium chloride (see col 9 Example 8), 0.1-6% flavorant (see col 6 lines 49-53), 0.1% sodium benzoate (see col 10 Example 10), 0.1-40% sweeteners such as saccharin salts (see col 6 lines 22 and 31), 0.2% methylparaben, which although is not within the 0.5 to 1% range is common in the industry and can be varied through routine optimization by one of ordinary skill in the art to meet the claimed range and up to 2% of colorants (although the specific colorants claimed are not disclosed are absent evidence to the contrary standard colorants in the industry and therefore obvious to one of ordinary skill in the art to use).

Melman does not teach from 10-20 % vinegar, from 1-5% polysorbate-20, from 0.1 to 1% sodium citrate or from 0.1 to 1% sodium laureth sulfate.

Vermeer teaches an antibacterial (see col 2 line 6) mouthwash (see col 10 line 6) comprising 0.9% polysorbate-20 which although is not within the 1-5% range as claimed is common in the industry and can be varied through routine optimization by one of ordinary skill in the art to meet the claimed range, 0-8% sodium citrate (see col 38 lines 45-58) and 1% sodium lauryl sulfate (see col 92 Example 117).

Zelaya teaches an oral rinse composition (see Abstract) comprising water and vinegar which together making up about 67 to 77 weight percent of the composition wherein the ratio of water to vinegar is from 5:2 to 2:5 (see col 4 lines 42-46).

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Pinol teaches an oral liquid antibacterial composition (see Abstract) comprising 2% of PEG-40 (see paragraph 57).

One of ordinary skill in the art would be motivated to combine Melman, Vermeer, Zelaya and Pinol and as combined would make obvious the invention as claimed. Each reference is directed to a liquid oral care product for stomatic indications and each employ standard ingredients for oral care products. Moreover, each of the claimed elements are standard in the oral care product industry and are each disclosed in more than one of the cited references. Thus, the claimed invention of the method was within the ordinary skill in the art to make and use at the time it was made and was as a whole, *prima facie* obvious.

No Claim is allowed

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Graffeo whose telephone number is 571-272-8505. The examiner can normally be reached on 9am to 5:30pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

18 July 2005

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